

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-502055-D2 AND ALL  
OTHER SEAMAN DOCUMENTS

Issued to: Charles T. Stephenson

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1509

Charles T. Stephenson

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 2 March 1965, an Examiner of the United States Coast Guard at Boston, Massachusetts suspended Appellant's seaman documents for three months outright plus three months on eighteen months' probation upon finding him guilty of misconduct. The seven specifications found proved allege, in effect, that while serving as an oiler on board the United States SS PRESIDENT HAYES at Naples, Italy and acting under authority of the document above described, on 25 January 1965, Appellant assaulted and battered a ship's officer by shoving him; assaulted a ship's officer by putting him in fear; engaged in a fight with another oiler; addressed a ship's officer with foul and abusive language on three occasions; and failed to stand his 0400 to 0800 due to the influence of intoxicants. There was no evidence of any physical injury to those involved.

At the beginning of the hearing on Monday, 1 March, Appellant requested a change of venue to New York City so that he could be represented by Attorney Julius J. Rosen with whom Appellant had consulted by telephone as early as Thursday, 25 February. This request was made on the advice of Mr. Rosen.

The Investigating Officer objected to a change of venue because the witnesses were presently available and, although the ship was scheduled to go to New York City from Boston, there was possibility that the itinerary might be changed due to strike in New York. The Investigating Officer stated that Appellant was told on Wednesday, 24 February, that he would probably be charged; and when Appellant was served with the charge and specification at 1500 on Friday, 26 February, and stated that Mr. Rosen was his lawyer but could not get to Boston for the hearing, Appellant was advised by the Investigating Officer to retain local counsel because the hearing would be held in Boston.

When Appellant insisted that he desired to be represented by a lawyer, the Examiner continued the hearing until the following morning for this purpose.

On 2 March, Appellant was not represented. He reiterated his request for a change of venue, again on the advice of Mr. Rosen who said he would not be able to represent Appellant in Boston. The Investigating Officer again objected and stated that Appellant had repeatedly been told that the hearing would be in Boston. The Examiner denied the request for a change of venue in view of the possibility that arrangements could not be made to conduct the hearing in New York. The Examiner mentioned that Appellant had been allowed ample time to provide for counsel and asked Appellant if he had anyone available to represent him. Appellant replied in the negative and the Examiner ordered the hearing to proceed.

The Investigating Officer introduced in evidence the testimony of five witnesses who were members of the crew. Each was an eyewitness to one or more of the offenses alleged.

No evidence was introduced in defense although the Examiner asked Appellant if he wanted to testify under oath or submit other evidence. Appellant stated that he was drunk at the time of the alleged offenses and did not remember what had happened.

At the end of the hearing on 2 March, the Examiner rendered an oral decision in which he concluded that the charge and seven specifications had been proved. The Examiner then served a written order on Appellant suspending all documents, issued to him, for a period of three months outright plus three months on eighteen months' probation. The entire decision was served on 15 March.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant was not afforded a fair hearing since he was arbitrarily deprived of his right to counsel of his choice. His request for a change of venue was denied even though it was known that the vessel would go to New York after leaving Boston, so that all the witnesses would have been available at New York. The Investigating Officer misinformed the Examiner that the vessel probably would not be in New York long enough to hold a hearing when, in fact, the vessel was scheduled to be in New York as long as in Boston. A delay until the vessel reached New York would not have endangered the vessel or inconvenienced the Coast Guard.

In order to maintain proper standards of fairness in these proceedings, this case should be dismissed.

APPEARANCE: Julius J. Rosen, Esquire, of New York City, of Counsel

#### OPINION

I agree with the Examiner that it was a proper exercise of his discretion to deny the request for a change of venue. The Examiner was concerned about the uncertainty of being able to arrange for a hearing in New York as well as about Appellant's desire for counsel. Appellant wanted the

hearing transferred to New York for the convenience of his counsel and made no attempt to obtain local counsel although given a reasonable opportunity to do so. Convenience of counsel is not a relevant factor to be considered in deciding a request for a change of venue. See United States v. SS CLAIBORNE, 226 F.Supp. 578 (S.D. N.Y. 1964) and cases cited therein. Hence, Appellant did not even approach sustaining the burden of establishing that the Examiner's denial of the request was so clearly erroneous as to constitute an abuse of discretion. This is the standard to apply. See Commandant's Appeal Decision Nos. 982 and 1266.

There is no evidence that the Investigating Officer misinformed the Examiner, as contended on appeal, as to the length of time the vessel was scheduled to be in New York. The record shows that the Investigating Officer told the Examiner the vessel was scheduled to be in New York for approximately three days but there was a remote possibility that she would not go to New York due to a strike (R.13).

The fact that, as matters developed, it would have been convenient for the government to have held the hearing in New York is not material since the burden was on Appellant to show that for the convenience of the parties and in the interest of justice (28 U.S.C. 1404 (a)), the action should have been transferred. Since this burden was not sustained, there is no merit in the contention that Appellant was deprived of a fair trial. He was repeatedly advised to obtain local counsel if he desired to be represented but he did not do so. He thereby waived his right to counsel.

The hearing was conducted fairly in every aspect and, as stated by the Examiner, there is an abundance of evidence to prove the offenses alleged. There is no reason to do other than uphold the action of the Examiner since the order of suspension imposed is not excessive.

#### ORDER

The order of the Examiner dated at Boston, Massachusetts, on 2 March 1965, is AFFIRMED.

W.D. Shields  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 23rd day of June 1965.

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